

NOTICE TO STAKEHOLDERS REGARDING FILING OF RPS REGULATIONS PERTAINING TO THE SOLAR CARVE-OUT

On Tuesday June 8, 2010, the Massachusetts Department of Energy Resources (DOER) filed its final Renewable Energy Portfolio Standard (RPS) Class I revised regulation 225 CMR 14.00 pertaining to the implementation of the Solar Carve-Out program and other technical changes. As required by statute, DOER filed the regulations with the Clerks of the Senate and the House of Representatives, who shall refer the regulation to the Joint Committee on Telecommunications, Utilities, and Energy, which then has 30 days to provide comments back to the DOER. After another 30 days in which DOER may make final changes to the regulation based on the Committee's comments, DOER will then file the final regulation with the Secretary of State's Office.

Compared to the proposed final draft regulation subject to a public hearing on March 2, 2010, important changes in the regulation, resulting from the TransCanada settlement and comments received by stakeholders, are as follows. A tracked-changed version of the regulations is posted on the DOER website.

- As per the settlement agreement with TransCanada, Section 14.08(3)(b)(3) is revised such that competitive Retail Electric Suppliers will be able to meet their Solar Carve-Out compliance obligation for load under contract prior to January 1, 2010 with an Alternative Compliance Payment at a rate equal to the RPS Class I ACP rate for the applicable Compliance Year. These eligible contracts do not include any contracts associated with Basic Service load sold by distribution companies to retail customers.
- The adjustment to the Solar Carve-Out Minimum Standard provided in Section 14.07(2) has been modified to provide Generators and Suppliers greater certainty with regard to the market demand for SRECs and compliance obligations. The revision provides that DOER will again announce the adjustment to the compliance obligation (MWh of total SREC demand in July before the possible Auction process) and the Minimum Standard (percent obligation in August after load data for the prior year is available), but the adjustment will affect the Compliance Year starting the following January, not the current one as of July/August for which SRECs trading is just beginning and many load contracts are already executed.
- A provision has been added in Section 14.05(4)(i) pertaining to the Solar Credit Clearinghouse Auction. The section provides that if the third (and final) Auction does not clear, the un-cleared volume of Re-Minted Auction Account Attributes will be returned to the Generators who made the deposits and the Generators will be allowed to sell the Attributes for compliance over their 3-year extended life span.
- Section 14.05(4)(a) has been revised to clarify the 2 MW capacity limitation of eligible projects for the Solar Carve-Out.
- Section 14.06(3)(e) provides for a change in the upward adjustment of the Opt-In Term such that the Term will increase by 4 quarters for each full 10% of the compliance obligation met with ACP Payments (but not to exceed 40 quarters). This adjustment is thereby symmetric with the downward adjustment based on deposits to the Auction Account.
- A modification not pertaining to the Solar Carve-Out has been made in Section 14.05(7) to address the unique situation of a landfill gas to energy project that is re-located.
- In Section 14.10(2), revisions have been made to clarify the content of the annual report issued by DOER to provide market information.

Impact of TransCanada Settlement on SREC Market

While DOER realizes as a practical matter that providing a reduced ACP Rate for pre-existing contracts will result in a reduction in the demand for SRECs in the early years of the program, that exact percentage is unknown at this time. The demand will be a direct reflection on that percentage of load that was contracted for prior to January 1, 2010 which is data that DOER does not generally collect. DOER did discuss this issue with a handful of competitive retail suppliers, and under a confidentiality agreement, obtained contract information from 8 suppliers serving about 1500 GWh in 2009. DOER provides the following information with no warranty of its accuracy beyond the above stated parameters.

Approximately 50% of the retail load in Massachusetts is served by competitive suppliers, and of that portion, DOER estimates that about 70-90% of that load will be served in 2010 under a pre-2010 contract. This percentage decreases dramatically in the following years as contracts expire or are renewed, such that in 2011 only 40% of the competitive supply load will be served by pre-2010 contracts. This trend continues with 20% in 2012, 10% in 2013, and under 5% in 2014.

It is important to remember that combined with the growth in the Minimum Standard each year, the overall percent of applicable load relative to the Standard diminishes even more substantially.

While DOER hopes this very limited analysis provides some information to the solar development community but will not assure its accuracy beyond the given parameters or be responsible for any further conclusions drawn by any market participant. DOER will receive additional information on load under contracts by retail suppliers as part of the 2009 Annual Compliance Filing and will report that information, in the aggregate, as soon as it is available.